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employee, as an act of sport, turned an air-compressor upon him. The employer had known of the employees' habit of using the air-compressor in sport, but had made no objection. The employee was working when injured. *Held*, that the injury arose out of the employment within the meaning of the Workmen's Compensation Act. *In re Loper* (1917, Ind.) 116 N. E. 324.

It is generally held that the employer is exempt from liability for compensation where the injury to the employee is caused by the wilfully tortious act of either fellow employees or outsiders. *Armitage v. Lancashire & Y. R. R. Co.* [1902] 2 K. B. 178; *Union Sanitary Mfg. Co. v. Davis* (1917, Ind.) 115 N. E. 676. Such injuries are said not to arise "out of the employment." On similar principles compensation is generally denied where the injury is the result of "horseplay." *Wilson v. Laing* (1909) 46 Sc. L. Rep. 843; *Fishering v. Pillsbury* (1916) 172 Cal. 690. The principal case appears to be the first to recognize an exception where the habit of horseplay is knowingly allowed by the master to continue—thus, in the court's view, making the habit an element of the conditions under which the employee is required to work. The decision seems sound, and an analogy to support it may be found in such cases as *Rowland v. Wright* [1909] 1 K. B. 963 (the "stable-cat case"), and *Nisbet v. Rayne, etc.* [1910] 2 K. B. 689. By failing to control his recklessly playful employees the master subjects their fellow employees to a special hazard. A further analogy is found in the common-law doctrine that the master is not only under a duty to a servant to make proper rules for the use of safe methods of work by fellow servants, but may also be liable if, having made such rules, he permits their habitual violation. See *Ohio & Miss. R. R. Co. v. Collarn* (1881) 73 Ind. 261, 273; *cf. Hogle v. Franklin Mfg. Co.* (1910) 199 N. Y. 388, 92 N. E. 794.

F. C. H.

WORKMEN'S COMPENSATION ACT—INJURY "ARISING OUT OF" EMPLOYMENT—PERIL ATTACHED TO WORKMAN'S PARTICULAR LOCATION.—The falling of a wall on the adjoining premises of a neighbor carried down the roof of the defendant's shed, in which the plaintiff was at work as a herring packer, and injured the plaintiff. *Held*, that the injury was caused by an "accident arising out of the employment." *Thom v. Sinclair* [1917] A. C. 127, 116 L. T. 609.

The compensation acts of many of the states are identical with the English Act in limiting compensation to employees injured by accident "arising out of" and "in the course of" the employment. Drawing a distinction between the two conditions of liability indicated by the above-quoted phrases, it has generally been held that "arising out of" includes only risks incidental to the nature or character of the employment. *Craske v. Wigan* (C. A.) [1909] 2 K. B. 635; *Hoenig v. Industrial Com.* (1915) 159 Wis. 646, 150 N. W. 996. The accident need not be one that could have been foreseen or expected. *Larke v. Hancock Life Ins. Co.* (1915) 90 Conn. 303, 97 Atl. 320. Nor need it be one peculiar to the employment, if the employment accentuates a common hazard. *Andrew v. Fallsworth Ind. Soc.* (C. A.) [1904] 2 K. B. 32; *State v. District Court* (1915) 129 Minn. 502, 153 N. W. 119. But the weight of judicial opinion has been opposed to the

proposition that an injury is shown to be compensable merely by showing that the presence of the person injured in the place where the accident befell him was due to his employment. *Klawinski v. L. & M. S. Ry. Co.* (1915) 185 Mich. 643, 152 N. W. 213. It would seem that the principal case marks a departure in the character of causation required to satisfy the Act. The court refuses to go beyond the "*proxima causa*," i. e., the falling of the roof, and declares that the remote cause which brings down the roof—whether it be a neighbor's wall or a bolt of lightning—is immaterial. Such a view seems to render indistinguishable the two conditions of liability imposed by the Act. It makes the employer an insurer against accidents whether or not they are related to the nature of the employment. Cf. *Trim School Bd. v. Kelly* [1914] A. C. 667. One American case has been found in accord. *Kimbol v. Industrial Acc. Com.* (1916) 173 Cal. 351, 160 Pac. 150. It is submitted, however, that the dissenting opinion in that case contains the more cogent reasoning.

H. S.

WORKMEN'S COMPENSATION ACT—RECOVERY FOR DISEASE CONTRACTED IN THE COURSE OF THE EMPLOYMENT.—The plaintiff, after working for twenty-five years rolling cigars, was disabled by "neurosis" resulting from his working posture, which caused a certain amount of pressure on the brachial plexus. *Held*, that this was not a personal injury within the meaning of the statute. *In re Maggelet* (1917, Mass.) 116 N. E. 972.

Under Workmen's Compensation Acts limiting recovery to "personal injury by accident," unless, as in England, special provision to the contrary is made, no recovery can be had for diseases not resulting from a definite injury constituting the "accident." *Adams v. Acme White Lead Works* (1914) 182 Mich. 157, 148 N. W. 485. In several states, however, the act omits the qualifying words, "by accident." Yet the majority of the courts do not put a broader interpretation on such statutes than on those of the former class. *Industrial Commission v. Brown* (1915) 92 Oh. St. 304, 110 N. E. 744. *Miller v. American Steel & Wire Co.* (1916) 90 Conn. 349, 97 Atl. 345. Massachusetts, however, had already construed its statute very liberally in permitting recovery for disease. *In re Hurle* (1914) 217 Mass. 223, 104 N. E. 336 (optic neuritis); *In re Johnson* (1914) 217 Mass. 388, 104 N. E. 735 (lead poisoning). The test, as explained in the principal case, seems to be whether the diseased condition results from the cumulative effect of what might be regarded as a succession of physical injuries, though each "injury" in itself may be too slight to be perceptible; with the further requirement that these "injuries" must be the result of some exposure, strain, or other cause "peculiar to the employment." The final test is, therefore, one of causation, and the plaintiff failed in the principal case because it did not appear that his posture was a necessary incident of his employment. The case is interesting chiefly for its further exposition of the exceptional Massachusetts doctrine.

H. S.